2359.

SUPREME COURT OF THE UNITED STATES.

No. 197.

HENRY M. BAYARD, PLAINTIFF IN ERROR,

vs.

ISRAEL LOMBARD AND CHARLES O. WHITMORE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DIST. OF PENNSYLVANIA.

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J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable judges of the circuit court of the United States for the eastern district of Pennsylvania, greeting:

Because in the record and proceedings of a plea which is in the said circuit court before you, between Israel Lombard and Charles O. Whitmore, citizens of Massachusetts, &c., plaintiffs, and Henry M. Bayard, a citizen of Pennsylvania, &c., is defendant, No. 28, April sessions, 1845, of said court, and in the final process issued therein and the proceedings thereupon, particularly in the decree of the said court making distribution of the money raised by the sale of the real estate of the defendant, the said Henry M. Bayard, and also in the costs taxed therein and the order of the court thereupon, a manifest error hath happened, to the great damage of the said Henry M. Bayard, and the Bank of Middletown, and the Farmers' Bank of the State of Delaware, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if a decree be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 17th day of November, in the year of our Lord one thousand eight hundred and forty-seven.

GEORGE PLITT,
Clerk of the circuit court of the United States,
Eastern dist. of Pennsylvania.

(Allowed by) J. K. KANE.

UNITED STATES, *Eastern district of Pennsylvania, sct:*

In obedience to the foregoing writ, I herewith transmit to the Supreme Court of the United States a full and complete transcript of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, so far as the same remains of record in my office, (the declaration having been mislaid or lost,) in a certain suit therein determined in favor of Israel Lombard and Charles O. Whitmore, plaintiffs, against Henry M. Bayard, defendant.

Witness my hand and the seal of the said court, at Philadelphia, this eleventh day of December, A. D. 1847, and in the seventy-second year of the independence of the said United States.

[SEAL.]

GEORGE PLITT,
Clerk of said court.

THE UNITED STATES OF AMERICA:

To Jacob Lombard and Charles O. Whitmore, and James McCormick and Jacob M. Haldeman, and Richard H. Bayard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of United States, for the eastern district of Pennsylvania, wherein Henry M. Bayard, a citizen of Pennsylvania, &c., is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John K. Kane, a judge of the circuit court of the United States for the third circuit, this seventeenth day of November, in the year of our Lord one thousand eight hundred and forty-seven.

J. K. KANE.

Citation.

STATE OF PENNSYLVANIA, *Dauphin county, sct:*

On this thirtieth day of November, in the year of our Lord one thousand eight hundred and forty-seven, personally appeared Henry B. Wood, before me, the subscriber, president judge of the twelfth judicial district of Pennsylvania, and makes oath, that he delivered true copies of the within citation to James McCormick, esq., and Jacob M. Haldeman, esq., the persons named in said citation, at Harrisburg county, and State aforesaid, on the thirtieth day of November, A. D. 1847.

HENRY B. WOOD.

Sworn and subscribed before me, the day and year above written.

NATHANIEL B. ELDRED,
President Judge.

PHILADELPHIA CITY, *ss:*

C. B. Penrose being duly sworn according, deposeth and saith, that on the 3d day of December, 1847, *that* he delivered a true copy of the within citation to Richard H. Bayard therein named.

C. B. PENROSE.

Sworn and subscribed, this fourth day of December, A. D. 1847, before— JNO. COOK, *Alderman.*

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

Of April session, 1845—No. 28.

It is thus contained:

To Henry D. Gilpin, esquire, attorney of the court of common pleas, at Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, or to any other attorney of the said court, or of any other court, there or elsewhere.

Whereas, Henry M. Bayard, a citizen of the State of Pennsylvania,

residing in Dauphin county, in said State, iron-master, in and by a certain obligation, bearing even date herewith, doth stand bound unto Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, residing in Boston, in said State, co-partners, under the firm of Lombard & Whitmore, in the sum of sixty-two thousand four hundred and twenty dollars, lawful money of the United States of America, conditioned for the payment of thirty-one thousand two hundred and ten dollars, on or before the seventh day of December next, with lawful interest from the date thereof. These are to desire and authorize you, or any of you, to appear for the said Henry M. Bayard, his heirs, executors, or administrators, in the said court or elsewhere, in an action of debt there or elsewhere brought, or to be brought against him, the said Henry M. Bayard, his heirs, executors, or administrators, at the suit of the said Israel Lombard and Charles O. Whitmore, co-partners as aforesaid, their executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time, there or elsewhere to be held, and confess judgment thereupon against the said Henry M. Bayard, his heirs, executors, or administrators, for the sum of sixty-two thousand four hundred and twenty dollars, lawful money of the United States of America, debt, besides costs of suit, by non sum informatus, nihil dicit, or otherwise, as to you shall seem meet; and for your or any of your so doing, this shall be your sufficient warrant. And I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever quit-claim unto the said Israel Lombard and Charles O. Whitmore, co-partners as aforesaid, their certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections, whatever, in the entering of the said judgment, or any process or proceedings thereon, or thereto, or anywise touching or concerning the same.

In witness whereof I have hereunto set my hand and seal, the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and forty-five.

H. M. BAYARD. [SEAL.]

Sealed and delivered in the presence of—
W. S. TOLAND,
JAS. A. BAYARD, JR.

Whereupon the said defendant, by Oliver Hopkinson, esquire, his attorney, comes and defends the force and injury, when, &c., and saith, that he cannot gainsay the writing obligatory as aforesaid, nor but that the same is his act and deed, nor but that he owes to the said plaintiffs the said sum of sixty-two thousand four hundred and twenty dollars, in manner and form as the said plaintiffs have declared against the said defendant.

And thereupon, it is considered by the court here, that the said plaintiffs recover against the said defendant, as well the sum of sixty-two thousand four hundred and twenty dollars, as the sum of ,

for their costs and charges by them about their suit in that behalf expended.

Afterwards, to wit, on the twenty-third day of March, A. D. one thousand eight hundred and forty-six, the said plaintiffs, by their attorney, John M. Read, esquire, prosecute and sue forth out of said court the writ of fieri facias of the President of the United States, to the marshal of the eastern district of Pennsylvania directed, and which said writ is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, sct:

The President of the United States, to the marshal of the eastern dis-
[SEAL.] trict of Pennsylvania, greeting:

We command you that, of the goods and chattels, lands and tenements, in your district, of Henry M. Bayard, a citizen of the State of Pennsylvania, late of your district, you cause to be made and levied, as well a certain debt of sixty-two thousand four hundred and twenty dollars, which Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, copartners under the firm of Lombard & Whitmore, in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, before the judges of the said court, by the consideration of the same judges, lately recovered against the said Henry M. Bayard, as the sum of eight dollars and ninety-five cents, which to the said Israel Lombard and Charles O. Whitmore, in the said court, was in like manner adjudged for their damages which they had sustained by occasion of the detention of that debt, whereof the said Henry M. Bayard is convict, as appears of record; and have you those moneys before the said judges, at a session of the same court, to be holden at Philadelphia, on the eleventh day of April next, to render to the said Israel Lombard and Charles O. Whitmore, for their debt and damages aforesaid; and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-third day of March, A. D. 1846, and in the seventieth year of the independence of the United States.

FRA. HOPKINSON,
Clerk circuit court.

Endorsed.

No. 2. Circuit court, April S., 1846. Original. No. 28, April S., 1845. Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, copartners under the firm of Lombard & Whitmore, to the use of Jacob M. Haldeman and James McCormick vs. Henry M. Bayard, a citizen of the State of Pennsylvania. Fi. fa. debt, $62,420; real debt, $24,104 57: interest from 1st October, 1845; costs, $8 95; fi. fa., $0 50.

JOHN M. READ, *for plaintiffs.*

Afterwards, to wit, on the ninth day of March, A. D. 1847, the said marshal makes return thereof in the words following, viz:

"Levied and condemned, as per inquisition annexed." So answers

GEO. M. KEIM,
U. S. marshal, E. D. of Pennsylvania.

Levied upon the following tracts or pieces of land, the property of H. M. Bayard, in the county of Lancaster, and eastern district of Pennsylvania.

No. 1. All that messuage and tract of land, situate in West Hempfield township, Lancaster county, bounded and described as follows, that is to say: beginning at a black oak tree, thence, by land of John K. Smith, south seventy-one degrees west, forty-five perches, to a post; thence, by land of John Landis, south nineteen degrees east, twenty perches, to a post; thence, by another tract of Henry M. Bayard, hereinafter described as No. 2, north seventy-one degrees east, fifty-one perches and three-tenths of a perch, to an old stump; thence, by land of E. and C. B. Grubb, north thirty-six and an half degrees west, twenty-one perches and three-tenths of a perch, to the place of beginning, containing six acres, neat measure, more or less. On this tract there are a one-story frame dwelling-house, frame stable, blacksmith's shop, and other improvements. There is iron ore on this tract.

No. 2. All that tract of land, composed of two contiguous tracts of land, situate also in West Hempfield township, Lancaster county, bounded and described as follows, that is to say: beginning at an old stump, thence, by the above described tract of land No. 1, and land of John Landis, south seventy-one degrees west, fifty-six perches and one half of a perch, to a post; thence, by "the Grider Farm," hereinafter described as No. 3, south twenty-one degrees and three-quarters of a degree east, thirty-five perches and three-quarters of a perch, to a post; thence, by the same, north eighty-eight degrees east, one perch and seven-tenths of a perch, to a post; thence, by the same, south sixty-four degrees east, thirty-six perches and three-quarters of a perch, to a post; thence, by the same, north forty-nine degrees and a quarter east, thirty-two perches and a quarter of a perch, to a post; thence, by the same, north forty-nine degrees west, twenty-eight perches and one-quarter of a perch, to a post; thence, by the same, north fifty-one and an half degrees east, twenty and one-quarter perches, to a post; thence, by land late of Matthias Friday, deceased, (now Grubb,) north thirty-eight degrees and three-quarters of a degree west, twenty perches, to the place of beginning; containing, together, eighteen acres, more or less. On this tract there are large and valuable iron ore banks.

No. 3. The undivided eighth part of a messuage and tract of land, situate also in West Hempfield township, Lancaster county, bounded and described as follows, that is to say: Beginning at a chestnut tree, thence by land of Jacob Garber, north sixty-three degrees west, thirty-one perches and sixteenths of a perch, to a chestnut oak; thence by the same, forty-four degrees and one quarter of a degree west, nineteen

perches and seven-tenths of a perch, to a stone; thence by land of George Getz, north forty-six degrees and one-half of a degree west, fifty-six perches, to a hickory; thence by land of M. Swar and A. Brown, north forty-nine degrees east, seventy-four perches and three-tenths of a perch, to a chestnut tree; thence, by land of John Landis, north seventy-one degrees east, forty-seven perches and eight-tenths of a perch, to a post; thence by the tract last described as No. 2, south twenty-one degrees and three-quarters of a degree east, thirty-five perches and three-fourths of a perch, to a post; thence by the same, north eighty-eight degrees east, one perch and seven-tenths of a perch, to a post; thence, by the said last described tract, No. 2, south sixty-four degrees east, thirty-six and three-quarter perches, to a post; thence by the same, north, forty-nine degrees and one-quarter of a degree, east, thirty-two perches and one-quarter of a perch, to a post; thence, by the same, north forty-nine degrees west, twenty-eight perches and four-tenths of a perch, to a post; thence, by the same, north fifty-one degrees and an half east, sixty-six perches and one-quarter of a perch, to a stone; thence, by land late of Matthias Friday, deceased, north sixty-five degrees and an half east, thirty-three perches and *sixteenths* of a perch, to a stone; by D. Grom, south sixty-five degrees east, eight perches and eight-tenths of a perch; by N. Hogentogler, south twenty-eight degrees and one-quarter of a degree west, six perches and *nineteenths* of a perch, to a hickory; same, south thirty-one degrees and one-eighth of a degree east, thirty-seven perches and two-tenths of a perch, to a post; same, south fifty-five degrees east, thirty-one perches and eighty-five hundredths of a perch, to a post; by Joseph Hogentogler, south twenty degrees west, fifteen perches and nine-tenths of a perch, to a post; same, south one-half degree west, fifty-one perches and one-quarter of a perch, to a stone; thence, by M. Sechrist and others, north seventy-two degrees west, fifty-six perches and two-tenths of a perch, to a post; thence, by same, south twenty-one and an half degrees west, fifty-two perches and three-tenths of a perch, to a tree; thence, by Martin Gross, north seventy-nine and three-quarter degrees west, sixty-three perches, to a hickory; thence, by M. Musser, north eighty-nine and an half degrees west, fifty-seven perches and three-tenths of a perch, to the place of beginning: containing one hundred and forty-four acres and a quarter, strict measure, more or less. This tract is known by the name of "The Greider Farm," and there are on it a one-and-a-half-story dwelling-house, a one-story tenant house, bank barn, wagon-shed, corn-crib, hog-pen, and other improvements. On this tract there is a large quantity of iron ore.

Inquisition indented and taken at Philadelphia, in the eastern district of Pennsylvania, the ninth day of March, in the year of our Lord one thousand eight hundred and forty-seven, before George M. Keim, U. States marshal in and for the eastern district of Pennsylvania, by virtue of a writ of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to me directed, and

to this inquisition annexed, by the oaths and affirmations of the jurors, whose names and seals are hereunto annexed, good and lawful men, of the district aforesaid, who, upon their solemn oaths and affirmations aforesaid, respectively, do say, that the rents, issues, and profits, of the within described property, by me, the said marshal, taken in execution by virtue of said writ, wherein Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, copartners under the firm of Lombard & Whitmore, to the use of Jacob M. Haldeman and James M'Cormick, plaintiffs, and Henry M. Bayard, a citizen of the State of Pennsylvania, defendant, are not of a clear value, beyond all reprises, sufficient, within the space of seven years, to satisfy the debt and damages in the writ aforesaid mentioned.

In testimony whereof, as well I, the said marshal, as the inquest aforesaid, to this inquisition have interchangeably set our hands and seals, the day and year first above written.

GEORGE M. KEIM, [SEAL.]
U. S. Marshal.

James T. Desmond,	[Seal.]	Thomas De Silver,	[Seal.]
Stephen Taylor,	[Seal.]	Clark Goldsmith,	[Seal.]
Hugh Cassady,	[Seal.]	Paul S. Brown,	[Seal.]
George Gilbert,	[Seal.]	Robert Flinn, jr.	[Seal.]
Robert Hutchinson,	[Seal.]	John Thompson,	[Seal.]
Will. Allen,	[Seal.]	W. Sayre Heysham.	[Seal.]

Afterwards, to wit, on the fourth day of April, A. D. one thousand eight hundred and forty-six, a paper is filed, which said paper is in the words following, to wit:

"We do hereby authorize and direct John M. Read, esquire, to mark this suit and judgment to the use of Jacob M. Haldeman and James M'Cormick.

LOMBARD & WHITMORE.

Oct. 18, 1845."

"Mark the above suit and judgment to the use of Jacob M. Haldeman and James M'Cormick.

JOHN M. READ,
Attorney for plaintiffs, as above.

F. HOPKINSON, esq., *Clerk, &c.*"

Afterwards, to wit, on the tenth day of March, A. D. one thousand eight hundred and forty-seven, the said plaintiffs, by their attorney aforesaid, prosecute and sue forth out of said court the writ of venditioni exponas of the president of the United States, to the marshal of the eastern district of Pennsylvania aforesaid directed, and which is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, sct:

The president of the United States, to the marshal of the eastern district of Pennsylvania, greeting:

[SEAL.]

Whereas we lately commanded you, that of the goods, chattels, lands, and tenements, in your district, of Henry M. Bayard, a citizen of the State of Pennsylvania, late of your district, you should cause to be made and levied, as well the sum of sixty-two thousand four hundred and twenty dollars, which Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, copartners under the firm of Lombard and Whitmore, to the use of Jacob M. Haldeman and James McCormick, in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, before the judges of the said court, by the consideration of the same judges, lately recovered against the said Henry M. Bayard, for their damages which they had sustained, as well by occasion of the not performing certain promises and assumptions by the said Henry M. Bayard to the said Israel Lombard and Charles O. Whitmore, made, as the sum of eight dollars and ninety-five cents which to them in the said court was likewise adjudged for their costs and charges by them about their suit in that behalf expended, whereof the said Henry M. Bayard is convict, as appears of record; and that you should have those moneys before the said judges, at a session of the same court to be holden at Philadelphia on the eleventh day of April then next, to render to the said Israel Lombard and Charles O. Whitmore, for their damages and costs aforesaid, and that you should have then there that writ; and you, on the ninth day of March, eighteen hundred and forty-seven, in pursuance of the said writ to you directed, returned that you had levied upon and taken in execution the following described real estate, as the property of Henry M. Bayard, to wit:

No. 1. All that messuage and tract of land situate in West Hempfield township, Lancaster county, bounded and described as follows—that is to say, beginning at a black oak tree; thence by land of John K. Smith, south seventy-one degrees west, forty-five perches, to a post; thence by land of John Landis, south nineteen degrees east, twenty perches, to a post; thence by another tract of Henry M. Bayard, hereinafter described as No. 2, north seventy-one degrees east, fifty-one perches and three-tenths of a perch, to an old stump; thence by land of E. and C. B. Grubb, north thirty-six and an half degrees west, twenty-one perches and three-tenths of a perch, to the place of beginning; containing six acres, neat measure, more or less. On this tract there are a one-story frame dwelling-house, frame stable, blacksmith's shop, and other improvements. There is iron ore on this tract.

No. 2. All that tract of land composed of two contiguous tracts of land, situate also in West Hempfield township, Lancaster county, bounded and described as follows—that is to say, beginning at an old stump; thence by the above described tract of land, No. 1, and land

of John Landis, south seventy-one degrees west, fifty-six perches and one-half of a perch, to a post; thence by "the Greider farm," hereinafter described as No. 3, south twenty-one degrees and three-quarters of a degree east, thirty-five perches and three-quarters of a perch, to a post; thence by the same, north eighty-eight degrees east, one perch and seven-tenths of a perch, to a post; thence by the same, south sixty-four degrees east, thirty-six perches and three-quarters of a perch, to a post; thence by the same, north forty-nine degrees and a quarter east, thirty-two perches and a quarter of a perch, to a post; thence by the same, north forty-nine degrees west, twenty-eight perches and one-quarter of a perch, to a post; thence by the same, north fifty-one and an half degrees east, twenty and one-quarter perches, to a post; thence by land late of Matthias Friday, deceased, (now Grubb), north thirty-eight degrees and three-quarters of a degree west, twenty perches, to the place of beginning; containing together eighteen acres, more or less. On this tract there are large and valuable iron ore banks.

No. 3. The undivided eighth part of a messuage and tract of land, situate also in West Hempfield township, Lancaster county, bounded and described as follows—that is to say, beginning at a chestnut tree; thence by land of Jacob Garber, north sixty-three degrees west, thirty-one perches and sixteenths of a perch, to a chestnut oak; thence by the same, forty-four degrees and one-quarter of a degree west, nineteen perches and seven-tenths of a perch, to a stone; thence by land of George Getz, north forty-six degrees and one-half of a degree west, fifty-six perches, to a hickory; thence by land of M. Swar and A. Brown, north forty-nine degrees east, seventy-four perches and three-tenths of a perch, to a chestnut tree; thence by land of John Landis, north seventy-one degrees east, forty-seven perches and eight-tenths of a perch, to a post; thence by the tract last described as No. 2, south twenty-one degrees and three-quarters of a degree east, thirty-five perches and three-fourths of a perch, to a post; thence by the same, north eighty-eight degrees east, one perch and seven-tenths of a perch, to a post; thence by the said last described tract No. 2, south sixty-four degrees east, thirty-six and three-quarter perches, to a post; thence by the same, north forty-nine degrees and one-quarter of a degree east, thirty-two perches and one-quarter of a perch, to a post; thence by the same, north forty-nine degrees west, twenty-eight perches and four-tenths of a perch, to a post; thence by the same, north fifty-one degrees and an half east, sixty-six perches and one-quarter of a perch, to a stone; thence by the land late of Matthias Friday, deceased, north sixty-five degrees and an half east, thirty-three perches and six-tents of a perch, to a stone; by D. Grom, south sixty-five degrees east, eight perches and eight-tenths of a perch; by N. Hogentogler, south twenty-eight degrees and one-quarter of a degree west, six perches and nineteenths of a perch, to a hickory; same, south thirty-one degrees and one-eighth of a degree east, thirty-seven perches and two-tenths of a perch, to a post; same, south fifty-five degrees east, thirty-one perches and eighty-five hundredths of a perch, to a post; by Joseph Hogentog-

ler, south twenty degrees west, fifteen perches and nine-tenths of a perch, to a post; same, south one-half degree west, fifty-one perches and one-quarter of a perch, to a stone; thence by M. Sechrist and others, north seventy-two degrees west, fifty-six perches and two-tenths of a perch, to a post; thence by same, south twenty-one and an half degrees west, fifty-two perches and three-tenths of a perch, to a tree; thence by Martin Gross, north seventy-nine and three quarter degrees west, sixty-three perches, to a hickory; thence by M. Musser, north eighty-nine and an half degrees west, fifty-seven perches and three-tenths of a perch, to the place of beginning; containing one hundred and forty-four acres and a quarter, strict measure, more or less. This tract is known by the name of "The Greider Farm;" and there are on it a one-and-a half story dwelling-house, a one-story tenant house, bank barn, wagon shed, corn crib, hog pen, and other improvements. On this tract there is a large quantity of iron ore.

All of which remained in your hands unsold for want of buyers, and therefore you could not have those moneys before the said judges, at the day and place in the said writ mentioned. And you did also, on the said ninth day of March, eighteen hundred and forty-seven, return a certain inquisition indented, taken at Philadelphia, before you, the said marshal, by the respective oaths and affirmations of twelve honest and lawful men of your said district, which said twelve honest and lawful men, upon their oaths and affirmations respectively, did say, that the rents, issues, and profits of the foregoing described property, so as aforesaid by you levied upon and taken in execution, to satisfy the damages and costs aforesaid, were not of a clear yearly value, beyond all reprises, sufficient, within the space of seven years, to satisfy the damages and costs in the said writ mentioned.

Wherefore, we command you, that all the foregoing described property, by you in form aforesaid levied upon and taken in execution, without delay, you expose to sale, and that you have that money before the said judges, at a session of the same court to be holden at Philadelphia on the twelfth day of April next, to render to the said Israel Lombard and Charles O. Whitmore, for their damages and costs aforesaid. And have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this tenth day of [SEAL.] March, A. D. 1847, and in the seventy-first year of the independence of the said United States.

GEORGE PLITT, *Clerk Circuit Court.*

Endorsed: "No. 2. Circuit court, April S., 1847. Original, No. 28, April S., 1845. Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, copartners under the firm of Lombard & Whitmore, to the use of Jacob M. Haldeman and James M'Cormick, vs. Henry M. Bayard, a citizen of the State of Pennsylvania. Vend. exponas—debt. Real debt, $24,104.57. Int. from 1st Oct'r, '45. Costs, $8.95; fi. fa., $0.50; vend. exp., 50=$9.95.

"J. M. READ, *for Plaintiff.*"

Afterwards, to wit, on the fifteenth day of April, A. D. one thousand eight hundred and forty-seven, the said marshal makes return of the said writ, in the words following, to wit:

"To the honorable the judges of the circuit court.

"I do certify, that, after giving the notice by public advertisements in the newspapers in the county in which the lands sold were situated, and by handbills, according to law, I did, on the ninth day of April inst., expose the within described property to public sale, at the house of George Gamber, in West Hempfield township, Lancaster county, in the eastern district of Pennsylvania, at two o'clock, P. M., and sold the same, as follows:

Tract No. 1, to Ann Caroline Bayard, for - - -	$3,100
Tract No. 2, to Ann Caroline Bayard, for - - -	55,000
Tract No. 3, to Ann Caroline Bayard, for - - -	3,100
	$61,200

Making in the aggregate sixty-one thousand two hundred dollars, after deducting the sum of eight hundred and sixty-six dollars 20-100, commissions and costs; leaving a sum of sixty thousand three hundred and thirty-three 80-100 dollars; which amount has not been received by the marshal, but has been agreed, by the lien creditors interested in this fund, to be considered as being paid into court.

"So answers GEORGE M. KEIM,

"*U. S. Marshal E. D. of Pennsylvania.*

"PHILADELPHIA, *April* 15, 1847."

Afterwards, to wit, on the seventeenth day of April, A. D. one thousand eight hundred and forty-seven, an assignment of the aforesaid judgment is filed, which assignment is in the words following, to wit:

"ISRAEL LOMBARD and CHARLES O. WHITMORE, of Massachusetts, copartners under the firm of Lombard & Whitmore, for the use of Jacob M. Haldeman and James M'Cormick,
vs.
HENRY M. BAYARD.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, April session, 1845.

No. 28. 25th July, 1845. Judgment. Real debt, $24,104.50. Int. from 1st October, 1845.

We, Jacob M. Haldeman and James M'Cormick, assignees of Lombard & Whitmore, do hereby assign and transfer the above stated judgment to Ann Caroline Bayard, without recourse to us, for value received, this fifteenth day of April, one thousand eight hundred and forty-seven.

J. M. HALDEMAN,
JAS. M'CORMICK.

Afterwards, to wit, on the first day of May, A. D. one thousand eight hundred and forty-seven, Messrs. Blythe and Harris, attorneys for the Dauphin Deposite Bank, a judgment creditor, ask the court for leave to take out of this court the amount of the judgment recovered by the said bank against the said defendant in the district court of the county of Lancaster, No. 135, June term, 1845, said judgment being for the sum of twenty-five hundred dollars, with interest.

Afterwards, to wit, on the seventh day of June, A. D. one thousand eight hundred and forty-seven, on motion of Mr. Harris, for the Dauphin Deposite Bank, to take out of court the amount of a judgment of said bank in the district court of the county of Lancaster, against the said defendant, there being before the court Mr. Penrose, for the Bank of Middletown, and for Ann Caroline Bayard, the purchaser at the marshal's sale; Mr. John M. Read, for Messrs. McCormick and Haldeman, plaintiffs in the execution; Mr. Rawle, for Richard H. Bayard, a judgment creditor, and the defendant in his proper person; and it being represented that the money made by the marshal is, by agreement of the parties here represented, considered as in court, although the same has not been paid to the marshal of the court, it is thereupon ordered by the court, that James Hepburn, esquire, be appointed auditor, to report who are entitled to the moneys so considered as in court, and to make said report to the court at its session on the twentieth day of September then next, at ten o'clock, A. M., and that the said auditor be directed to give notice to all persons interested in the matter referred to him, by advertisement, to be published for three weeks in the "Democratic Union," at Harrisburg, and in the "Pennsylvanian," at Philadelphia.

Afterwards, to wit, on the twentieth day of September, A. D. one thousand eight hundred and forty-seven, the auditor, appointed as aforesaid, makes report in the words following, to wit:

To the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania.

The undersigned, the auditor appointed by your honorable court, as per certificate annexed, marked A, with instructions to report who are entitled to the moneys in the said certificate mentioned, as being in court, by the agreement of the parties claiming the same, secured by a sale of the property of the defendant, situated in Lancaster county, Pennsylvania, by an execution directed to the marshal of this district, in the suit of Lombard and Whitmore vs. Henry M. Bayard, in this court, respectfully reports:

That he gave notice to all persons interested in the matter referred to him, by advertisements published for three weeks in the "Democratic Union" at Harrisburg, and in the "Pennsylvanian" at Philadelphia, as directed by the order of court, stated in the said certificate, and as will appear from schedule B, hereto annexed; and that he was attended at the time and place in the said advertisements mentioned, and

at the several adjournments of the case, by John M. Read, esq., who appeared for Lombard and Whitmore, for the use of Ha deman and McCormick; C. B. Penrose, esq., who appeared for the Middletown Bank; Calvin Blythe, esq., and W. Harris, esq., who appeared for the Dauphin Deposite Bank; William H. Rawle and William Rawle, esquires, who appeared for R. H. Bayard; and Mr. Wilson, President of the Farmers' Bank of the State of Delaware, who attended on behalf of the said bank.

The execution above mentioned, issued from this court in the case of Lombard and Whitmore vs. Henry M. Bayard, whose real estate in Lancaster county was levied upon and sold by the marshal of this district to Ann Caroline Bayard, on the 9th day of April, 1847, for the sum of $61,200, subject to a mortgage of $18,000, the marshal's deed to which was acknowledged to the purchaser on the 15th day of April, 1847; and the sum of $61,200, the said purchase money, is the sum considered in court, and mentioned in the said certificate marked A, and is the subject of reference to the undersigned.

A list of the judgments hereto annexed, marked C, will exhibit the several claims upon the fund, which are stated in the said list in the order of their dates respectively. The question for examination respects the liens of these judgments; and if the judgments in this court are liens upon the lands of the defendant, situated in Lancaster county at the time of the sale, then the judgments are to be paid in the order of their dates, as stated in the list; but if the judgments of this court are not liens on the said lands, then the judgments of Richard H. Bayard, of January 20, 1844, and those of Lombard and Whitmore, of July 25, 1845, and July 29, 1845, are to be postponed as to the fund for distribution.

The case was submitted to the auditor without argument; and having to depend upon his own research in ascertaining the law involved in the subject of inquiry, the defects that may be apparent in the view of the case now about to be submitted may be the more readily accounted for.

It would seem that the lien of judgments on the real estate of defendants, obtained in the courts of the United States, was for a long time the subject of doubt. The first case, in point of date, that I have met with, is that of Konig vs. Bayard, October term, 1829, 2 Pain's Rep., decided in the circuit court of the United States, for the southern district of New York. In that case, it was held that the judgment created a lien upon the lands of the defendant, from the time it was docketed, according to the rule in the State courts; and that the lands of a debtor were liable to be taken in execution after they had passed into the hands of a bona fide purchaser, by a conveyance subsequent to the judgment, and prior to the issuing of the execution; and the principles upon which the judge founded his opinion may have weight in the present case.

It was held "that the liability of lands to execution in the courts of the United States, does not arise from any act of Congress expressly making them so liable, but from the operation of the process acts of

1789 and 1792; the State law upon the subject being thereby adopted, should be considered as also adopting the effect and operation of the judgment as a lien.

"The repeated decisions in the courts of the United States, although they have not directly decided the point, had proceeded upon the presumption that the lien created by a judgment in the United States' courts upon land, and the mode of proceeding to obtain satisfaction of the judgments, are regulated entirely by the State laws.

"That Congress, by the process act, adopted both the form and effect of executions as established by the State laws in 1789. That their form and effect in this State, (New York,) depended upon the State act of 1787, which requires the sheriff to take the goods and chattels of the defendant, and, if sufficient cannot be found, then to make the debt and damages out of the land, &c., whereof the defendant was seized on the day on which such lands become liable to such debt. That the execution thereupon extends to, and operates upon, the lands of which the defendant was seized on that day; and that this was its effect, which had been adopted by the process act."

The next case, in point of time, that I have met with, is that of Tayloe vs. Thompson, in the Supreme Court of the United States, 5 Peters' Rep., decided in a case taken up under the laws of Maryland. It was contended for the plaintiff in error, that no statute of Maryland authorized the sale of lands for debt, and that the statute of 5 Geo. 2nd, antecedent to the Revolution, was the only legislation upon the subject. That that statute rendered lands in the colonies subject to execution as chattels, and this only in favor of British merchants; and no execution having issued upon the lands in question before the title to them passed to the plaintiffs, consequently, as in the case of chattels, no lien attached upon the judgment.

The court, in delivering their opinion, said, "this statute, (2d Geo. 2d,) has been adopted and in use in Maryland ever since its passage, as the only one under which lands have been taken in execution and sold. It has long received an equitable construction, applying it to all judgment creditors. As Congress has made no law on this subject, the circuit court were bound to decide the case according to the law of Maryland; which does not consist merely in enactments of their own, or the statutes of England in force or adopted by their legislation. The adjudication of their courts, the settled, uniform practice and usage of the State, in the practical operation of its provisions, evidencing the judicial construction of its terms, are to be considered as part of the statute, and as such furnishing a rule for the decision of the Federal courts. The statute, and its interpretations, form together a rule of title and property, which must be the same in all courts. It is enough for this court to know that, by established usage, the statute (Geo. 2d) has been acted on and considered as applying to all judgments in favor of any person; and that sales made under them have been held valid as titles. Though the statute does not provide that the judgment shall be a lien from the time of its rendition, yet there is abundant evidence that it has always

been so considered, and so acted on." And the judge concludes by saying, "that there was no doubt that the courts of Maryland had decided it as a rule of property from the earliest period, that a judgment is a lien per se on the lands of the defendant." And, therefore, the lien of the judgment in the circuit court was sustained from the date of its rendition.

In the case of the Manhattan Company vs. Evertson, 6th Paige's Rep. 465, the question that bore upon the doctrine of lien depended upon the question, whether a judgment in the United States' court, for the southern district of New York, was a lien upon lands lying within the northern district of the same State; and, in delivering his opinion, the chancellor says: "There is no act of Congress making a judgment, in a court of the United States a lien on lands, either within the general territorial jurisdiction of the court, or elsewhere. The existence of such a lien must therefore depend upon the local law of the State where the land is situated upon which such a lien is claimed.

"By the common law a freehold could not be reached by a judgment, except in the case of an heir, upon a judgment bond, or other specialty. The statute 13 Edward 1st, which gave the writ of elegit, by which one-half of the land of the judgment debtor might be taken in extent, did not, in terms, create a lien, so as to prevent a sale by the debtor before execution; but the uniform construction of the statute has been, to give such a lien, from the entry of the judgment, upon the lands which could be reached by the process of the court. And when the British statute of George 2d, ch. 7, subjected lands in the colonies to sale on execution, the same principle was adopted in the colony of New York, and in most of the colonies, as to the lien of the judgment upon real estate, which might be thus sold; and this lien was held to extend to all freehold lands which could be reached by an execution out of the court in which the judgment was entered. And when a judgment was removed from an inferior into the Supreme Court, and there affirmed, such judgment became a lien upon all lands of the debtor throughout the State, from the time of the docketing of the judgment in the Supreme Court. Such was the state of the law here, (New York,) at the time of the Revolution.

"The act of 1787, which was substituted in the place of the British statute subjecting lands to execution, recognises the existence of such lien in the form of the execution which is directed by the statute to be issued against the lands of the debtor, as the sheriff is directed, in case the personal estate is insufficient to pay the judgment and costs, to levy the same on the lands and tenements whereof the judgment debtor was seized on the day the lands become liable, or at any time afterwards.

"And that a judgment of a court of the United States is a lien upon the real estate of the debtor, in accordance with the local law of the place where the land lies, is settled by the Supreme Court. 5 Peters, 358.

"Upon the principle which has been adopted by Congress, and by the

Supreme Court of the United States, the legal effect of a judgment as a lien upon the real estate of a defendant, whether such judgment is rendered in a court of the State or in a Federal court, where no direction on the subject has been given by the sectional legislature, must necessarily be governed by the local law, although the mode of proceeding to enforce such lien, where it exists, may not be the same in the courts of the State and Federal courts. I have no doubt, therefore, that the lien of a judgment recovered in one of the circuit or district courts of the United States, within the limits of this State, is a lien upon the lands of the debtor lying within the territorial jurisdiction of such court, for the term of ten years from the docketing of such judgment, in the same manner that a judgment of a court of record in one of the State courts is a lien.

"And the only difficulty is, in determining whether the lien, according to the true principle of the local law, extends to all lands which may be reached by the execution of the court, or only to such as are within the territorial jurisdiction to which the original process of such court extends." And the chancellor concluded by saying, "but with some hesitation, that a judgment recovered in the circuit court, in either of the districts, is a lien upon real property lying in any part of the State within which the circuit court is held." And he added, "that if a county court were authorized to issue execution throughout the State, that the principle of the local law would extend the liens of the judgments thereafter recovered throughout the State; that such was the construction of Virginia, permitting execution upon a judgment in a local court to be issued to other counties;" and cited 2 McCall's Reps., 186.

In the case of Conig vs. Bayard, heretofore referred to, the same doctrine is held, that the lien of a judgment upon the lands of a defendant existed by virtue of the right to take it in execution and sell it in satisfaction of the debt.

The case of the United States vs. Morrison, 4 Peters' Rep., was taken up to the Supreme Court of the United States by appeal from the circuit court from the east district of Virginia. The chief justice, in delivering the opinion, says, "that in Virginia there is no statute which, in express terms, creates a lien upon the lands of the debtor. As in England, the lien is a consequence of the right to take out an elegit. Different opinions seem to have been entertained of the effect of any suspension of the right. By the construction of the circuit court, the party who sued out a fi. fa. could not resort to an elegit until the remedy on the fi. fa. was shown by the return to be exhausted:" that is, that the lien was suspended until the return of the fi. fa., and the adverse right, having attached in the mean time, was preferred to that claimed under the judgment.

But soon after the judgment in the circuit court, and before the case came up to be heard in the Supreme Court, the court of appeals of the State decided that the right to take out an elegit was not suspended by suing out a fi. fa., and consequently that the lien of the judgment was continued pending the proceedings on that writ. And upon the ground

of this decision of the court of appeals, establishing the law of the State, the judgment of the circuit court was reversed and the cause remanded, the chief justice observing that "this court, according to its uniform course, adopts that construction of the act which is made by the highest court of the State."

The above case recognises the position, that where a lien is dependent upon the right to issue execution, and that right is suspended, the lien is suspended also; and is remarkable for the strong expressions used by the chief justice, in reference to the deference paid by the courts of the United States to State laws.

The case of Tayloe vs. Thompson, in the Supreme Court, rather assigns the local law of the State, recognised in its highest tribunals, establishing the lien of judgments, without special regard to the reasons by which it became established, as the ground of their decisions; and in that case the judgment is held to be a lien per se.

And in 4 Peters' Rep., 366, the Supreme Court have held, that in Kentucky a judgment does not bind land; that the lien attaches only from the delivery of the execution to the sheriff; and in that State, therefore, the right to issue execution does not carry with it a lien upon lands.

In Ohio, the lien of a judgment is lost, if execution is not sued out and levied within a year from its rendition.

In Tennessee, a judgment of a county court is a lien, for one year after its rendition, on defendant's lands throughout the State, and prior judgments take precedence of executions. Mats. & Yerg., 26.

Judgments in the circuit court of the United States, in the State of Ohio, rendered previous to May, 1828, attached as liens upon the lands of defendant throughout the State, in virtue of the adoption by that court of the execution laws of the State, in the regulation of its practice. Sellers vs. Curwin, 5 Ham., 398.

Here are presented a variety of local laws of different States on the subject of the lien of judgments, some derived from one principle and some from another; and it may be remarked, that the statute of George 2d, the construction of which by the State courts of New York is the ground of the chancellor's opinion above quoted, could have no application to any State formed since the Revolution, and after the States were colonies of Great Britain, to whom in that relation alone it applied. But hence the strong propriety of a broader ground of decision, on the part of the Federal courts, to adapt their proceedings to the local laws; and this is comprehended in the view of the Supreme Court, taking the established law of the State as the basis of their judgments in matters of local character. And this ground of decision embraces all States, whatever may be the date of their creation, or the peculiarity of their laws; and this, I conceive, is the ground taken in the case of Tayloe vs. Thompson, before referred to.

It is not, however, deemed material in this case, whether one principle or the other be adopted, as either will lead, it is believed, to the same conclusion, in accordance with the local laws of Pennsylvania.

Antecedent to the act of the Pennsylvania Legislature of 1799, a judgment in the supreme court of the State was held to bind the lands of the defendant throughout the State; and the powers of the supreme court were held to be the same as those of the court of Kings' Bench, in England; and that the liens of judgments in the latter court being only bounded by its territorial jurisdiction, so those of the former had equal extent. That act, however, provided that no judgment of the supreme or circuit court of the State should be a lien on real estate, excepting in the county in which such judgment should be rendered. Purd. Dig. 432.

This is the only act of the Pennsylvania Legislature fixing territorial limits to the lien of judgments.

There are several acts familiar to every one, fixing limits as to time, which, it is conceived, have no bearing on this case, and which, therefore call for no special notice. The act of 1798, however, limiting the lien of judgments to five years, unless revived by scieri facias, having been considered in this court, and the general argument having, as it is deemed, a bearing upon the question under discussion, will be presently noticed.

The general doctrine of the lien of judgments has, however, been considered in the case of Krause's appeal, 2 Whar. Rep. 402, in the supreme court of the State. In that case the court say, "that neither the act of Parliament, which subjected lands, sub modo, to the payment of debts, nor our acts of 1700 and 1705, which made them liable to be sold absolutely, expressly provided that a judgment should be a lien on land. In both countries, however, it was held to bind land. Both there and here, it is expressly assumed, by the legislatures of the different countries, and the time when the lien is to commence, and how long it is to continue, by what proceeding prolonged, is expressly provided by different laws," &c. We may content ourselves with saying, that a judgment is a lien in Pennsylvania, on real estate, by acts of Assembly, and the nature and extent of the lien is according to the provisions of these enactments.

In the case of Thompson vs. Phillips, 1 Baldwin's Rep. 273, one of the questions considered by the circuit court was, whether the State law of 1798, limiting the lien of judgments on real estate, to five years, was obligatory upon the Federal courts, and it was held that it was, for a variety of reasons. "The terms of the act," it was said, "extend to all judgments," in any court of record, "within this State, and are broad enough to take in those of this court. Its object is declared to be, to prevent the risk and inconvenience to purchasers of real estate, by suffering judgments to remain a lien for an indifferent time, without any process to continue or revive the same, which apply in whatever courts such judgments are rendered. We cannot consider it as a mere process act, it is a part of a great system of jurisprudence, for the safety and protection of purchasers, &c. The questions arising under it are those of property, title, and the rights of purchasers, for a valuable consideration. It cannot be doubted, that this law should be the rule of decision

in a State court, and it is difficult to perceive a reason why a different rule should be adopted in this court, merely because the plaintiff, being a citizen of another State, may bring his suit here or in the State courts, at his option. Both the courts administer the laws and jurisprudence of the State; the rules of property and title are the same, as well as the modes of transmission by judicial process; all regulated by State laws, there ought to be one uniform course of adjudication upon them." "That over the subject matter Congress possesses no constitutional jurisdiction, nor has, in any manner, assumed its exercise. These are subjects of internal police and State regulation, over which the States have delegated no power to the General Government; on which the States can legislate to any extent, and in any manner, not prohibited by the constitution of the State or the Union." And the judge affirmed that the case came strictly within the 34th section of the Judiciary act.

The argument of the court in the above case, although it is applied to a question of limitation as to time, yet, it is apprehended, that its general doctrines are as applicable to a limitation in reference to territory, as to that of time. A restriction imposed upon the lien of a judgment as to territory would enter as fully into questions of property, title, and the rights of purchasers, as that of a restriction as to the period of its duration; and, therefore, if the local law is the rule of decision in the one case in the Federal courts, no reason is perceived why it should not be in the other.

But a State legislature can impose no rule upon a Federal court, directly or indirectly, that cannot be sustained by the Constitution of the United States. Such legislature has full power over their own tribunals, where it is not controlled by the State constitution; and they may enact what rules they please for their government within this limit; and if they were to abolish liens on real estate altogether, obtained through the medium of judgments, I apprehend the United States' courts, in accordance with the doctrines of the cases quoted, would be bound by it. But if a State were to restrict the liens of all judgments, obtained in courts of record, to the counties in which they were recovered, it might well be doubted if the Federal courts would be bound by such enactment literally construed; for, in that case, the lien of a judgment in these courts would be excluded from every county composing the district, except that in which the court might be located. This, therefore, would form a different rule for the Federal courts from that which would operate upon the State courts. The rule in the supposed case, it may be observed, can have no reference to locality, as distinct from the jurisdiction intended to be acted upon, and the term county, used in this connexion, would be deemed merely a word used to designate the known limits of a given jurisdiction, and would, by applying the rule instead of a particular word to the Federal courts, embrace the district. If such would not be construction, there would be no uniformity of decision between the Federal courts and those of the State, and the evils pointed out in the case, in 1 Baldwin, 273, as likely to arise out of a collision between the State and Federal tribunals would be without

remedy. The State laws cannot be made to have any special and direct bearing upon the United States' tribunals. The latter merely administer the laws of the State as they find them, and because they are the laws of the State; but a law that would operate upon a Federal court exclusively, so as to restrain its action or the efficacy of its judgments, beyond the restraints imposed upon the State courts, could scarcely be called a State law; and it might well be doubted if there would be any obligation upon the Federal courts, either under the 34th section of the Judiciary act, or any acknowledged principle to observe its provisions. This is, however, supposing a difficulty that does not exist.

But it appears that Congress has legislated upon the subject of liens, so far as to designate the period when liens on judgments shall cease. By the act of July, 1840, ch. 20, sect. 4, it is provided, "That judgments and decrees thereafter rendered in the circuit and district courts of the United States, within any State, shall cease to be liens on real estate, or chattels real, in the same manner, and at like periods, as judgments and decrees of the courts of such State now cease by law to be liens thereon."

These words may be broad enough to comprehend liens in either relation, as regards territory or duration, but the word "now" used in the act, according to the construction given to the process act in the federal courts, would confine its action to the state of things to which it refers in the several States, as existing at the time of its passage.

However this may be, the act clearly recognises the existence of liens on judgments in the Federal courts, and as it requires that they shall cease in conformity to the State laws, it is just to infer, that in the contemplation of Congress they exist in conformity to the same laws, and in this recognising the doctrine held by the courts.

The foregoing decisions have a bearing on the case under consideration too obvious to call for any remark; and what remains to be said, may, therefore, be said very briefly.

As regards Pennsylvania, the statute of 2 Geo. 2d, was never in force, that I can ascertain. The act of 1705, passed by the local legislature, was in existence, and had been for several years before the passage of the former act, and superceded it. No local laws existing in the colonies of New York, Virginia, Maryland, and others, the British statute became the law, and the construction it received varied more or less in the several jurisdictions. How far the doctrine of lien, as it grew up in Pennsylvania, was dependent upon the construction given in England to the statute of 1 Edw'd 1st, which gave the writ of elegit, I am not able to trace. But that a judgment in Pennsylvania has been uniformly held to be a lien per se, liable to no suspension or interruption from any cause short of satisfaction, or its equivalent in law, for a very long time, admits, I think, of no doubt.

We therefore find, that the judgments of courts of record of the several States have liens attached to them binding real estate, but having their origin in different sources, and therefore varying in their effects;

and that the local law is universally adopted in the Federal courts in the decision of local questions, and especially those having connexion with real estate; and that the grounds upon which the local laws have been adopted have varied. In Ohio, judgments of the Federal courts are held to be liens, because these courts have adopted the execution laws of the State. In New York, Virginia, and other States, because of the operation of the Process act; and in Maryland, because a judgment is a lien per se.

Is Pennsylvania an exception to this otherwise universal rule?

The only statutary limitation of the liens of judgments in Pennsylvania, as regards territory, is the act of 1799, which has been heretofore referred to, and that act is confined in its operation expressly to the supreme and circuit courts of the State, and cannot be extended, by any construction, so as to affect such liens on the judgments of any other courts.

The case of White vs. Hamilton held the doctrine, that the lien of judgments in the supreme court extended throughout the State, because the jurisdiction of the court was thus extensive. The same rule has been adopted with regard to all other courts of record of the State, without any special legislation in reference to the subject of liens, but as an incident to the jurisdiction. In all the county courts, there is no other reason perceived why judgments obtained in them are liens throughout the county, but the fact that their jurisdiction extends throughout the county. The mere act of creating a court of record, and specifying the limits of its jurisdiction by State authority, extends the liens of judgments throughout these limits; and the application of the same rule to the circuit courts of Pennsylvania must, in accordance with received principles, be attended with like results.

If this is not the rule in the case under consideration, what is the limit as to territory of the lien of a judgment in the Federal courts of this State? That a lien of some extent attaches upon such judgment has been shown by the authority of decided cases, and by fair inference from acts of Congress. What, then, is its territorial extent? Philadelphia county, where this court holds its sessions, is no more specially within its jurisdiction than Lancaster county, or Berks, or Northampton, or any other county of the district. They are all alike, and equally within the territory assigned to the jurisdiction of the court, and to every intent and purpose are equally within its judicial action; and the same cause of argument that would go to exclude the lien of a judgment of this court from Lancaster county, would exclude it from every county of the district; or, in other words, would extinguish it.

Nor is it readily perceived how a lien on land can be obtained in Pennsylvania through judicial action, unless it attach upon a judgment. In 1 Baldwin's Rep. 268, the judge, in distinguishing between the effect of an execution, in its operating as a lien on real or personal estate, says: "As to land, the lien attaches by the judgment, and remains, though no levy be made. The sheriff has no right to take possession, or to enter upon it to make a levy; and after levy, he has neither the

right of possession, of property, or power to sell an estate of freehold in defendant, if the property be improved, &c." So in 1 Peter's Rep. 386, it is held, that "the lien by a general judgment on land gives the right to levy on the same, to the exclusion of adverse interests; and such levy, when made, relates back to the time of the judgment."

If land can only be levied by virtue of the lien, obtained through the judgment, then the existence of the lien is necessary to sustain the levy; and if the doctrine be true, that no lien attaches upon a judgment of this court, or that such lien does not extend to Lancaster county, then was there nothing to sustain the execution on which the land was sold, and the money raised, which is now the subject of controversy, and the whole proceedings in that connexion are void.

And it may be added, that all the reasons alleged for adopting the local law of lien by the Federal courts, apply to judgments in this case. For, 1st, the courts have adopted the execution laws of this State, as fully as in Ohio, where this is the ground alleged for adopting the lien law of that State; 2d, the process act applies as entirely to Pennsylvania as to New York and Virginia; and, 3d, a judgment in Pennsylvania is as much a lien per se, and forms a rule of title and property in this State, as in Maryland, and is therefore within the provisions of the 34th section of the Process act, which is the reason assigned for adopting the lien law of the latter State.

The auditor, therefore, is of opinion, that the authorities quoted sustain the position, that a judgment of this court is a lien upon the lands of the defendant in Lancaster county; and, therefore, that the judgment creditors, having prior liens, are entitled to the fund in court, after payment of the costs and expenses upon the judgments as far as they may be covered by the fund, and the expenses of this reference. The judgments to be paid according to their priority, without regard to the court in which they were recovered, as follows, to wit:

1845, June	Judgment in the district court of Lancaster county in favor of the president, directors, and company of the Bank of Pennsylvania, revived to June term, 1845, for - - - - - -	$24,100 00
	Interest to 9th April, 1847, the day of sale.	
1844, Jan'y 20.	Judgment in the circuit court of the Uni- States for the eastern district of Pennsylvania, in favor of Richard H. Bayard, Jan. 20, 1844. Judgment for -	$17,188 00
	Interest 'til 9th April, 1847, the day of sale.	
1845, July 25.	Judgment of Lombard & Whitmore, in the same court. Judgment obtained July 25, 1845, for - - - - -	$24,104 57

	Interest to 9th April, 1847, the day of sale.	
1845, July 29.	Judgment in favor of the same plaintiffs, in the same court. Judgment obtained July 29, 1845, for - - -	$10,000 00
1845, Aug. 26.	Judgment in favor of the Bank of Middletown, in the district court of Lancaster county, August 26th, 1845.	
1845, Aug. 28.	And another judgment in favor of the same plaintiff, in the same court, obtained August 28, 1845.	
	The amount due on both the above judgments, as ascertained by the parties, is - - - - - - -	$26,550 47
	But from this amount must be deducted any interest allowed in the settlement of the amount, between the 9th April and 9th July, 1847, on which last named day the settlement is dated.	
1845, Aug. 28.	Judgment in favor of the Dauphin Deposite Bank, in the district court of Lancaster county, obtained 28th August, 1845, for - - - - - -	$2,500 00
	Interest to 9th April, 1847.	
1845, Aug. 30.	Judgment in favor of the president, directors, and company of the Farmers' Bank of the State of Delaware, obtained in the court of common pleas of Lancaster county, for - - -	$12,000 00
	Judgment obtained August 30, 1845.	
	Interest from August 30, '45, to 9th April, 1847.	

All of which is respectfully submitted

JAMES HEPBURN, *Auditor*.

(A.)

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of April session, 1845.

LOMBARD & WHITMORE vs. HENRY M. BAYARD. } No. 28.

And now, June 7th, 1847, on motion of Mr. Harris, for the Dauphin Deposite Bank, to take out of court the amount of a judgment of said bank, in the district court of the county of Lancaster, against this defendant, there being before the court, Mr. Penrose, for the Bank of

Middletown, and for Ann Caroline Bayard, the purchaser at the marshal's sale; Mr. John M. Read, for Messrs. McCormick and Haldeman, plaintiffs in the execution; Mr. Rawle, for Richard H. Bayard, a judgment creditor, and the defendant in his proper person. And it being represented that the money made by the marshal is, by agreement of the parties here represented considered as in court, although the same has not been paid to the marshal of the court, P. CUR., James Hepburn, esquire, is appointed auditor, to report who are entitled to the moneys so considered as in court, and to make said report to the court, at its session on the twentieth day of September next, at 10 o'clock, A. M. And he is directed to give notice to all persons interested in the matter referred to him, by advertisement, to be published for three weeks in the Democratic Union at Harrisburg, and in the Pennsylvanian at Philadelphia.

1847, June 9th. Certified from the record.

[SEAL.] GEORGE PLITT,
Clerk of circuit court.

(B.)

In the circuit court of the United States, for the eastern district of Pennsylvania, in the city of Philadelphia.

In the matter of the fund raised in the case of LOMBARD & WHITMORE vs. HENRY M. BAYARD.

Whereas the money made by the marshal of the said district, by sale on process issued in the above suit, being, by the agreement of the parties, considered as being in court, and divers parties appearing in court and claiming the same, or portions thereof, the court appointed the undersigned, auditor, to report to the said court, who were entitled to the same, and directed to give notice to all parties interested in the matter so referred to him, as in the said order is specified.

This is, therefore, to give notice to all parties interested in the moneys aforesaid, that the auditor, appointed as above stated, will attend to the duties of his appointment, on Saturday, the 10th day of July, 1847, at 11 o'clock, A. M., at his office, No. 109, South Sixth street, in the city of Philadelphia, at which time and place they are requested to attend.

JAMES HEPBURN, *Auditor*,
No. 109, *South Sixth street*, *Philadelphia*.

The notice, of which the above is a copy, was published as directed by the order of court, in the "Pennsylvanian," in Philadelphia, and in the "Democratic Union," in Harrisburg.

(C.)

THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania vs. HENRY M. BAYARD. No. 142.

[REC. CXCVII, D. T. 1847.]—4

In the district court of the city and county of Lancaster, of December term, 1841.

Debt - - - - - - - - - -	$20,000 00
1845, June. Revived to June term, 1845, for - -	24,100 00
Interest - - - - - - - - - -	

RICHARD H. BAYARD
vs.
SAME DEFENDANT.

In the circuit court of the United States, eastern district, June 30, 1844.

1845, June 30. Judgment for - - - - -	$17,188 00
Interest - - - - - - - - - -	

LOMBARD & WHITMORE
vs.
SAME.

In the circuit court of the United States.

1845, July 25th. Judgment for - - - -	$24,104 57
1845, July 25th. Interest - - - - -	

SAME PLAINTIFFS
vs.
SAME DEFENDANTS.

In the circuit court of the United States.

1845, July 29. Judgment for - - - - -	$10,000 00
1845, July 29. Interest - - - - - -	

BANK OF MIDDLETOWN
vs.
SAME.

District court of Lancaster county, August 26, 1845.

1845, August 26. Judgment.

SAME PLAINTIFFS
vs.
SAME DEFENDANT.

District court, Lancaster county, August 28, 1845.

1845, August 28. Judgment.
(Vide agreement, stipulating the amount of the two foregoing judgments as settled.)

DAUPHIN DEPOSITE BANK
vs.
SAME DEFENDANTS.

District court, Lancaster county, August 28, 1845.

1845, August 28. Judgment - - - - -	$2,500 00

THE PRESIDENT, Directors, and Company of the Farmers' Bank of the State of Delaware, vs. SAME DEFENDANT. } No. 166.

In the court of common pleas of the county of Lancaster, August term, 1845.

1845, August 30. Real debt - - - - - -	$12,000 00
Interest from 13th June, 1845, to August 30, 1845, when judgment - - - - - - - -	
Interest from August 30, 1845 - - - - -	

This list of judgments was submitted to the counsel of the parties, and agreed to be correct.

J. HEPBURN, *Auditor.*

Afterwards, on the same day, exceptions to the auditor's report are filed, which exceptions are in the words following, to wit:

"On behalf of the Bank of Middletown and the Farmers' Bank of Delaware, we except to the report of the auditor in this case, on the ground that the auditor has erred in deciding that the judgments rendered in this court are a lien on the lands of the defendant in Lancaster county, Pennsylvania, and in awarding the proceeds of the sale of such lands to said judgments, to the exclusion of the judgments of record in the courts in Lancaster county.

B. H. BREWSTER,
CHARLES B. PENROSE,
Attorneys for Bank of Middletown and Farmer's Bank of Delaware."

"George W. Harris excepts to the report of the auditor, in the case above referred to, in awarding the money in dispute, in the said case, to the judgments obtained in the circuit court against Henry M. Bayard, instead of the judgment of the Dauphin Deposite Bank against the said Henry M. Bayard, in the district court of the county of Lancaster, the same being No. 135, of June term, 1845.

GEORGE W. HARRIS,
Attorney for the Dauphin Deposite Bank.
September 20, 1847."

Afterwards, to wit, on the eleventh day of October, A. D. one thousand eight hundred and forty-seven, after the hearing of counsel, the exceptions to the auditor's report are overruled by the court, the report is confirmed, and distribution is ordered in accordance therewith.

Afterwards, to wit, on the twenty-sixth day of October, A. D. one thousand eight hundred and forty-seven, in the matter of the appropriation of the proceeds of the real estate of Henry M. Bayard, sold by the marshal, on motion of C. P. Penrose, esq., it is ordered by the court, that the clerk of this court, on Saturday next, at half past nine o'clock, A. M., tax the costs in this case, including the costs of sale.

Afterwards, to wit, on the thirtieth day of October, A. D. one thousand eight hundred and forty-seven, the clerk's taxation of costs is filed in the words following, to wit:

LOMBARD and WHITMORE, vs. HENRY M. BAYARD. } No. 28. April S, 1845.

Costs taxed by the clerk:

Marshal's and clerk's costs, including all other costs, up to April 15th, 1847, as per bill annexed, - - - - -	$874 20
(Which amount has been paid.)	
Costs accruing since, and now due:	
Auditor's fees, as per bill annexed - - -	$250 00
Clerk's commissions on $300, at 1 per cent. - -	3 00
" " on $60,033 $\frac{80}{100}$ at $\frac{1}{2}$ per cent. -	300 16
	$553 16

GEORGE PLITTS, *Clerk of C. C.*

October 30, 1847.

It is agreed that in any ulterior proceeding, by way of appeal from the above taxation, or otherwise, upon exception to the same, all papers, documents, or other testimony which might have been offered and given in evidence before the clerk, in the above taxation, shall be admissible before the court.

Subject to this agreement, the costs are taxed as above.

GEORGE PLITT, *Clerk.*

October 30, 1847.

Marshal's bill annexed to the above.—April 15th, 1847.

WHITMORE, for use of McCormick and Haldeman, vs. HENRY M. BAYARD.

C. C. April S., 1847. Ven. exponas.

Marshal's costs:	Fi. fa. - - - - -		$2 00
	Levy, 90 miles - - - -		9 00
	Inquisition - - - -		9 00
	Ven. ex. - - - - -		2 00
	Advertising in newspapers - -		40 00
	" handbills - - -		7 00
	Posting, $4 00. Crier, $3 00 - -		7 00
	Sale, 90 miles - - - -		9 00
Commission on $61,200.	$500, at 2½ per cent. - - -		12 50
	$60,700, at 1¼ per cent. - - -		758 75
			$856 25
Paid clerk's costs - - -		$9 95	
Deed - - - - -		8 00	

Auditor's bill annexed to the foregoing.

LOMBARD and Whitmore,
vs.
HENRY M. BAYARD.

In the circuit court of the United States, for the eastern district of Pennsylvania:

The auditor to whom the above case was referred, for the purpose of ascertaining the parties entitled to the fund in court, raised from the sale of defendant's real estate, charges for his services and report, and all expenses incurred for advertising and incidental matters, $250.

JAMES HEPBURN, *Auditor*.

September 24, 1847.

Afterwards, to wit, on the same day, B. H. Brewster, esquire, attorney for Ann Caroline Bayard, the assignee of the judgment, appeals from the clerk's taxation of costs, and has leave to file exceptions by Monday, the first day of November, then next.

Afterwards, to wit, on the same day, C. B. Penrose, esquire, on behalf of the Bank of Middletown, moved the court to allow the entry of an appeal from the order of the court distributing the proceeds of the execution in this case; which motion, after the hearing of counsel, was overruled by the court.

Afterwards, to wit, on the same day, an affidavit and recognisance are filed, which are in the words following, to wit:

ISRAEL LOMBARD and Charles O. Whitmore, citizens of the State of Massachusetts, &c.,
vs.
HENRY M. BAYARD, &c.

No. 28. April sess., 1845. In the circuit court of the United States, for the eastern district of Pennsylvania:

In the matter of the distribution of the money raised by the sale of the real estate of the defendants the Bank of Middletown, the judgment in favor of whom, in the court of common pleas of Lancaster county, is excluded from the said distribution by the decree of this court, appeal from the said decree to the Supreme Court of the United States.

PHILADELPHIA CITY, *ss:*

Simon Cameron, cashier of the said bank, being duly sworn according to law, deposeth and saith, that the appeal taken by the Bank of Middletown in the above case is not intended for delay.

SIMON CAMERON.

Sworn and subscribed, this thirtieth day of October, 1847.

R. C. GRIER.

The UNITED STATES OF AMERICA,
vs.
SIMON CAMERON & [Alexander Cummings.]

Simon Cameron and Alexander Cummings are jointly and severally held bound to the United States of America, for the use of the persons who may be entitled, in the sum of one thousand dollars, to be levied of their goods and chattels, lands and tenements, upon this condition, that the Bank of Middletown shall prosecute with effect the appeal, this day taken by the said Bank, from the decree of the circuit court of the United States to the Supreme Court, in the within stated case, and pay the costs of affirmance in case the said decree should be affirmed, then this recognisance to be void, else to be and remain in full force and virtue.

SIMON CAMERON,
ALEXANDER CUMMINGS.

Taken and acknowledged this thirtieth day of October, 1847.
R. C. GRIER.

N. B.—The above affidavit and recognisance have been sworn and acknowledged before me, at the request of counsel, *valeant quantum valeant*, the court having previously refused, on motion of said counsel, to allow an appeal, on the ground that the party offering to appeal was not entitled to such remedy.

R. C. GRIER.

October 30, 1847.

Afterwards, to wit, on the first day of November, A. D. one thousand eight hundred and forty-seven, exceptions to bill of costs are filed, in the words following, to wit:

LOMBARD and WHITMORE, &c.,
vs.
HENRY M. BAYARD.

In the circuit court of the U. S., for the eastern dist. of Pennsylvania.

Exceptions to bill of costs.

1st. The fee or costs charged by the clerk in his own favor, being for commission on money deposited in court, is objected to.

It was agreed by the parties in interest, that the purchase money of the real estate of the defendant, sold by the marshal, should not be paid into court, and in point of fact it was appropriated by him, he charging a commission thereon. It was agreed to be considered in court, for the purpose of discovering whether the judgments to which it was appropriated, were paramount liens to the county liens. No service was rendered by the clerk for which this commission can be charged. It has no merit in fact, and is without authority in law.

2. The charge of two hundred and fifty dollars by the auditor is excepted to. The case was sent to an auditor because one of the judg-

ment creditors in the State court, whose judgment might be brought in, was not represented in court, and the parties agreed that as no fact was in dispute, and the question was one of law only, which must be decided [by] the court, that there should be no argument before the auditor, but that he should be asked simply to present the liens and the questions between them to be decided. There was no dispute in fact before him. He had express notice of this agreement immediately after his appointment; he notwithstanding prepared a written opinion on the question of law, which he reported to the court. For a written opinion on a question of law, the most eminent men at the bar of Philadelphia charge from ten to fifty dollars. It is not perceived that he could possibly charge more. The charge of the auditor is excessive.

B. H. BREWSTER,
Att'y for defendant and exceptants.

Afterwards, to wit, on the eighth day of November, A. D. one thousand eight hundred and forty-seven, the exceptions to the clerk's taxation of costs, after the hearing of counsel, were overruled by the court and the taxation confirmed, with the exception of the charge of one per cent. on the sum of three hundred dollars, which charge should be one-half per cent.

Afterwards, to wit, on the fifteenth day of November, A. D. one thousand eight hundred and forty-seven, Mr. Penrose moves the court that a final decree or order be entered by the court.

Afterwards, to wit, on the seventeenth day of November, A. D. one thousand eight hundred and forty-seven, on the motion that a final decree or order be entered, after the hearing of counsel, the motion is overruled by the court.

Afterwards, to wit, on the same day, a præcipe for a writ of error is filed, which præcipe is in the words following, to wit:

HENRY M. BAYARD, a citizen of Pennsylvania, plaintiff in error,
vs.
ISRAEL LOMBARD and Charles O. Whitmore, citizens of Massachusetts, &c., defendants in error.

SIR: Issue writ of error to the circuit court of the United States, for the eastern district of Pennsylvania, to remove the record and proceedings in the suit or action wherein the said Israel Lombard and Charles O. Whitmore, citizens of the State of Massachusetts, co-partners under the firm of Lombard and Whitmore, &c., are plaintiffs, and Henry M. Bayard, a citizen of the State of Pennsylvania, is defendant, No. 28, April session, 1845, including all the final process issued therein and the proceedings thereupon, and particularly the decree of the said circuit court making distribution of the money raised by the sale of the real estate of the defendant, the said Henry M. Bayard, and also the costs

taxed therein, the appeal therefrom, the exceptions filed thereto, and the order of the court thereupon.

Nov. 17*th*, 1847.

B. H. BREWSTER,
CHS. B. PENROSE,
Att'ys for plaintiff in error, and of the Bank of Middletown, and the Farmers' Bank of the State of Delaware.

GEORGE PLITT, ESQ.,
Clerk of circuit court United States, E. D. P.

Afterwards, to wit, on the same day, an affidavit and recognisance are filed, which are in the words following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, of April session, 1845. No. 28.

ISRAEL LOMBARD AND CHARLES O. WHITMORE, citizens, &c.,
vs.
HENRY M. BAYARD, a citizen of Pennsylvania.

In the matter of the distribution of the money raised by the sale of the real estate of the defendant, made by the marshal, &c., the Bank of Middletown appeals from the decree of the circuit court of the United States, for the eastern district of Pennsylvania, to the Supreme Court of the United States.

CIRCUIT COURT OF THE UNITED STATES,
Eastern district of Pennsylvania, sct:

Mercer Brown, president of the Bank of Middletown, being duly affirmed according to law, saith, that the appeal taken by the Bank of Middletown, as above stated, is not intended for delay.

MERCER BROWN.

Affirmed and subscribed, this seventeenth day of November, A. D. 1847.

J. K. KANE.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct:

Mercer Brown, held in the sum of one thousand dollars; Alexander Cummings, held in the sum of one thousand dollars, to be levied of their goods and chattels, &c.

The condition of this recognisance is such, that if the Bank of Middletown shall prosecute with effect the appeal taken from the decree or order of the circuit court of the United States, for the eastern district of Pennsylvania, to the Supreme Court of the United States, in the case and matter above stated, and if such decree or order shall be affirmed, the said Bank of Middletown shall pay all costs, damages, and charges,

which may be awarded, then this recognisance to be void, else to be and remain in full force and virtue.

MERCER BROWN,
A. CUMMINGS.

Taken and acknowledged, this seventeenth day of November, A. D. 1847.

J. K. KANE.

N. B. The above affidavit and recognisance have been sworn and acknowledged before me, at the request of counsel, valeant quantum valeant; the court having previously refused, on motion of said counsel, to allow an appeal, on the ground that the party offering to appeal was not entitled to such remedy.

J. K. KANE.

17 November, 1847.

Error to the circuit court of the United States, for the eastern district of Pennsylvania.

HENRY M. BAYARD, plaintiff in error,
vs.
LOMBARD AND WHITMORE, defendants in error.

Errors assigned.

1. The court erred in confirming the report of the auditor in this case, and in ordering distribution according to that report.

2. The court erred in ordering distribution of the fund raised by the sale of real estate, in Lancaster county, to be made to judgments entered of record in the said circuit court, in the county of Philadelphia, instead of to the judgments in favor of the Bank of Middletown and the Farmers' Bank of Delaware, respectively entered of record in the county of Lancaster, which were liens on the lands sold.

3. The court erred in assuming jurisdiction to make an order for the distribution of the fund raised by the sale of the real estate of the defendant below, among the judgment creditors of the defendants, some of such creditors having judgments of record in the State courts of the county of Lancaster, and in refusing to the Bank of Middletown, one of these creditors, an appeal to the Supreme Court of the United States, under the act of the General Assembly of the Commonwealth of Pennsylvania, passed the 16th April, 1827, entitled "An act relative to the distribution of money arising from sheriffs' and coroners' sales," &c., which gives such jurisdiction to State courts.

4. The court erred in overruling the exceptions to the costs, taxed by the clerk of the court, and in allowing the sum of two hundred and fifty dollars to the auditor, and a commission to the clerk on money not deposited in court, amounting to the sum of
to be deducted from the fund.

5. The court erred in refusing to enter a final decree in the case.

Filed 7 January, 1848.